

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LYMORE REISECK,

Plaintiff,

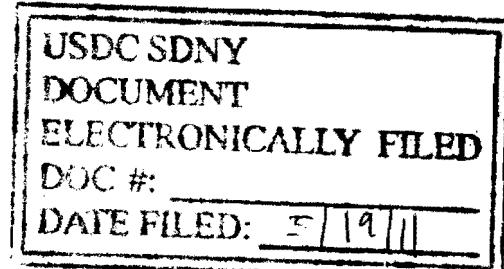
06 Civ. 0777 (TPG)

- against -

UNIVERSAL COMMUNICATIONS OF
MIAMI, INC., et al.,

Defendants.

OPINION



On January 11, 2010, the Second Circuit remanded Reiseck v.

Universal Communications of Miami, et al. to have this court reconsider Reiseck's motion for partial summary judgment. In particular, the Second Circuit instructed this court to consider whether Reiseck fell within two overtime exemptions to the FLSA and New York law—the “outside salesperson” exemption and the “commissioned salesperson” exemption. 591 F.3d 101, 108 (2d Cir. 2010).

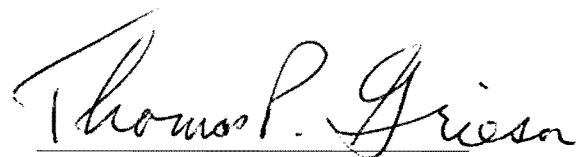
The court has considered the parties' submissions and holds that summary judgment is not appropriate for either side with regard to the outside salesperson exemption. In particular, the nature of Reiseck's work, the places of her work, the type of her work, the inferences to be drawn from these details, and the weight to be given to conflicting testimony are issues for trial.

With regard to the commissioned salesperson exemption, partial summary judgment is granted for plaintiff. The court holds that Universal was not a retail or service establishment and therefore is not entitled to the exemption.

The Clerk of the Court is directed to reopen this case.

SO ORDERED.

Dated: New York, New York
May 18, 2011


Thomas P. Griesa
U.S.D.J.